(1)

(11)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR:
CHHATTISGARH

SINGLE BENCH

CIVIL REVISION NO. 70 OF 2005

Applicant
Tenant

Subhash jain
S/o Shri Bhanwarlal jain
Aged about 39 years
R/o Behind Pujari School,
Pt. Ravishankar Ward,
Rajatalab, Raipur (CG)

P.R. 14/6/05
Presented before Hon'ble Shri S.S. Raipur
dated 16/06/05

Versus

Non-Applicant
Respondent
Land-lady

S R Smt. Pushpa Shrivastava
Wd/o Late Mahesh
Shrivastava, aged about
56 years, R/o G-2/5,
5 Building, Near Civil
Lines, Durg (CG)

REVISION PETITION UNDER SECTION 23 E OF THE
CHHATTISGARH ACCOMMODATION CONTROL ACT, 1961

(1)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

आदेश पत्रक

मामला क्रमांक CR 70/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3.12.2005:

Shri Sachin Singh Rajput learned counsel for the applicant.
Shri Vivek Sharma learned counsel for the respondent.

Heard.

The applicant/tenant has preferred this revision petition under section 23-E of the Chhattisgarh Accommodation Control Act (hereinafter referred to as "Act") whereby application for leave to defend preferred by him under section 23-C of the Act has been rejected on the ground that it was not supported by affidavit and was filed belatedly without there being any explanation there for.

2. Learned counsel for the applicant submits that the applicant received notice of the proceedings and appeared before the Rent Controlling Authority on 2.3.2005 and was granted time to file the written statement and ultimately it was filed on 11.4.2005. Thereafter, he filed an application for leave to defend on 27.4.2005 but it was not supported by affidavit. The said application was however rejected by the impugned order dated 9.5.2005.

3. Learned counsel for the applicant submits that delay in filing the application for leave to defend is explainable in the terms that since the applicant was granted permission to file written statement, leave to appeal might be impliedly granted. He further submits that the applicant subsequently moved an application for leave to defend supported by an

[पीछे देखिये

(50)

आदेश पत्रक

मामला क्रमांक CR 70/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

affidavit on 30.5.2005. Relying on the decision of the High Court of M.P. in the matter of **Gopal Shankar Sahai Vs. Thakur Sahab Singh reported in 1986 MPLJ, 163** submits that it is not the requirement that the application must be accompanied by an affidavit and it cannot be rejected simply for want of it and it is the duty of the Rent Controlling Authority to grant leave to defend if the applicant is otherwise in a position to make out a case on merits.

4. On the other hand learned counsel for the respondent relying on the judgment of High Court of M.P. in the matter of **Tilakraj Sharma Vs. Shyamabai Tiwari reported in 1997 (1) JLJ 295** and submits that where the tenant did not avail an opportunity of filing an application for leave to defend and files application belatedly, the application must be rejected. He further relied upon the judgment of the High Court of M.P. in the matter of **Bhanwarlal Vs. T.N. Saxena reported in 1993 (1) MPWN Note 86** and argued that where the application for leave to defend is not filed simply because the written statement is on record, it is of no consequence.

5. From the perusal of the order sheet of the Rent Controlling Authority it is evident that the learned Rent Controlling Authority had granted time to the tenant to file his written statement on three occasions and ultimately it was filed on 11.4.2005 and thereafter an application for leave to defend was filed on 27.4.2005 though it was not supported by the affidavit. From perusal of section 23-C of the Act it is clear that the Rent Controlling Authority has discretion to excuse the delay on the part of

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक CR 76/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

tenant in entertaining the application for leave to defend and this discretion extends to the extent that same can be allowed even after ex parte order has been passed and the same may be set aside.

6. In the instant case the ground taken by the tenant in his application for leave to defend is that the non applicant/land lady has a vacant alternative accommodation available with her which is sufficient for the purpose of her bona fide requirement. The condition precedent for granting order of eviction under section 23-A of the Act is that the land lord has to establish that he does not possess any suitable and alternative accommodation in the town where the premises is situated. So according to the opinion of this Court, there was triable issue before the Rent Controlling Authority to adjudicate the contention of the respective parties and therefore, the learned Rent Controlling Authority ought to have afforded an opportunity to the tenant to file an affidavit in support of the application for leave to defend and he ought to have condoned the delay in filing the application particularly in view of the fact that the time was granted earlier to the tenant for filing written statement.

7. In view of above, the application is allowed. The impugned order is set aside and the learned Rent Controlling Authority is directed to consider the defence of the applicant and thereafter pass appropriate order in the case.

Sd/-
Dhirendra Mishra
Judge

9.12.05 9.12.05

[पीछे देखिये